

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVANSTON INSURANCE COMPANY,	§	
<i>Plaintiff</i>	§	
	§	
V.	§	Civil Action No. 4:19-cv-1498
	§	
AMSPEC HOLDING CORP.,	§	
<i>Defendant</i>	§	

**DEFENDANT/COUNTERCLAIMANT AMSPEC HOLDING CORP.’S REPLY IN
SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT (DKT. 16)**

AmSpec files this reply brief in support of its motion for partial summary judgment, responding to points raised in Evanston’s response brief (Dkt. 21).¹

1. AmSpec’s expert Tom Irmiter provides opinions based on accurate weather data, consultation with a certified meteorologist, and extensive experience with Hurricane Harvey damage.

Evanston attacks AmSpec’s summary judgment evidence offered by its expert witness Tom Irmiter as “immaterial” and “not credible,” and attacks Irmiter’s report as “consisting almost entirely of quotations from publicly available sources.” (Dkt. 21 at 5). First, the latter contention is puzzling, in that the fact that Irmiter drew from publicly available sources strengthens the credibility of his conclusions. Evanston does not contest the accuracy of the weather data cited, perhaps *because* it is accurate. Second, although Irmiter is not a meteorologist, he has more than 45 years of combined experience in building causation failure analysis and forensic building inspections. (Dkt. 16-12 ¶ 2). Irmiter researches weather events as

¹ AmSpec will also be filing a response to Evanston’s motion for summary judgment and brief in support (Dkt. 17-18). But given the overlapping legal and factual arguments of the parties’ cross-motions, to avoid duplication, this reply focuses on the matters raised only in AmSpec’s response.

part of his practice, and is a trained NOAA weather spotter. (*See id.*) He consulted with Howard Altschule, a certified consulting meteorologist, in gathering weather data and forming his conclusions. (*Id.* ¶ 4.) Third, Irmiter has performed numerous inspections of many different types of structures affected by Hurricane Harvey. (Dkt. 16-12 ¶ 13).

Evanston’s argument that “neither Irmiter nor his company inspected any of the ports” is immaterial. (Dkt. 21 at 6). As the Court is aware, the coverage determination at issue here does not turn on whether any of the ports themselves were damaged. Rather, the issue is whether AmSpec lost business as a result an order of civil authority that was “a result of direct physical loss or damage to property” and “caused by a covered peril.” (*See* Dkt. 16-2 at AMSPEC 073). Nothing here requires AmSpec to show direct damage to the ports themselves, and thus any attacks on Irmiter not doing so are immaterial.

2. Neither Irmiter nor AmSpec are “trying to mislead this Court.”

Evanston suggests that AmSpec and Irmiter somehow “are trying to mislead this Court” by listing events in Irmiter’s declaration a certain way (Dkt. 21 at 6). This is unfounded. The simple explanation is that paragraphs 5-10 of Irmiter’s declaration lists events chronologically as they happened, with paragraph 9 – detailing the August 25 date for port condition Zulu closures of the Ports of Houston, Texas City, and Corpus Christi – providing a summary of the events of that day. (Dkt. 16-12 ¶ 9.) There is nothing nefarious or misleading about this.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that on this the 21st day of October 2019, a true and correct copy of the foregoing document was electronically filed by using the CM/ECF system, which will send notice of electronic filing to all counsel of record:

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